

for profit and held out to the public, or offered on an indiscriminate basis to classes of eligible users, or to such a broad class as to equal the public."

So Who's a Commercial Mobile Service?

Defining the commercial mobile services segment is, however, more difficult and, while Congress provided the Commission with its intent, there is urgent need for further clarification.

While a commercial mobile service seems, on the surface, narrowly defined, in the real world this definition encompasses a tremendous array of provider types, all providing a similar service, but in distinctly different ways. This group is as diverse as cellular, PCS, ESMRs and SMRs, paging, and for-profit two-way radio and community repeaters, although there may be instances where some of these services are not interconnected. Commercial mobile services, therefore, represents numerous distinct provider types.

In light of this, I suggest that the category of commercial mobile services can and should be further divided into two separate subgroups. I believe that by dividing the industry into the two categories it has chosen (private mobile services and commercial mobile services), Congress's definition of the mobile communications industry really represents only a partial view. A close inspection of the commercial mobile services market, as defined by Congress, demonstrates the myriad of provider types and services listed above, which make up the commercial segment.

I also believe that Congress intended this, and in fact gave the FCC the flexibility to

establish rules that reflect this reality. Congress divided the industry as it did because it wanted to realign the industry to protect user interest, and it gave the Commission the authority to regulate the commercial mobile services segment in such a way as to ensure that similar services are treated in a similar manner...or regulatory parity.

I agree that similar services should be treated in a similar fashion, and that is why I supported the provisions of the legislation that call for regulatory parity. However, in the commercial mobile services industry, a variety of market conditions exist that separate certain providers from others. I believe that this distinction is based on the amount of competition that exists in each market, which in the mobile communications industry can be tied to the amount of spectrum required to be a service provider in relation to the amount of available spectrum.

"Competition" is the Key

For example, some commercial mobile services, such as cellular, ESMRs, and soon PCS, are generally voice-based services that use broadband spectrum. These services enjoy significant market share and, therefore, limited competition. Conversely, other commercial mobile services, such as paging and for-profit two-way radio, occupy limited spectrum and experience significant competition.

These real-world market conditions suggest that the commercial mobile services industry can essentially be divided into two classes. I simply call these classes: Commercial 1/Open Entry and Commercial 2/Limited Entry. Under this scenario, the criteria for delineation between these two subgroups would be based either in terms of the amount of spectrum used by a

licensee in a given market or based on the relative percentage of available spectrum licensed to a particular provider. I believe that Congress recognized these distinct market realities when it stated that "market conditions may justify differences in the regulatory treatment of some providers of commercial mobile services."

As a result, Congress directed the FCC to determine which segment of the commercial mobile services market common carrier regulations should apply. I believe that when the FCC reviews the commercial mobile services market, the two subgroups I have defined will emerge. I also believe that the market conditions that distinguish these classes from each other warrant equal, but separate regulatory treatment as the best way to protect user interest. I believe that Congress intended this as well, and intentionally built into regulatory parity a degree of flexibility.

I also believe that a close review of the commercial mobile services market will lead the FCC to the same conclusions I have put forth. Before devising its regulatory strategy, the Commission must review the industry's competitive market conditions, including the number of competitors in each service, whether there is effective competition, and whether any competitor has a spectrum-dominant share of the market. In other words, the FCC must distinguish between the markets in which competition is protecting the user from those in which regulation is appropriate.

While I certainly support appropriate regulation, the recent uncertainty over the re-regulation of the cable industry is proof that regulation in and of itself does not necessarily lead to increased quality or reduced rates for users. In fact, in industry after

industry, history shows that competition is the most effective force to ensure quality service at reasonable rates. A debate is raging right now within the land-line communications industry over how to define competition and whether it exists in either the long-distance or local-exchange market, and if not, how best to encourage it.

In the mobile communications market, competition exists in those markets in which numerous providers have access to spectrum and in which users have numerous choices of providers. I believe that a competitive market exists in the market we call Commercial 1/ Open Entry--paging, traditional SMR, and for-profit two-way radio communications markets, including for-profit community repeaters. These services occupy small amounts of spectrum, and a quick check of the nearest phone book demonstrates the tremendous amount of competition that exists in these markets.

The Need for Flexible Regulatory Parity

According to Congress "the Commission may...forbear from regulating some providers of commercial mobile services if it finds that such regulation is not necessary to promote competition." In other words, the Commission is directed to protect the user interest by regulation only in those market segments where competition is not effectively reaching the same goal. As a result, I urge the Commission to implement a policy of flexible regulatory parity as the most effective method for protecting the user interest, and as the best way to encourage new and exciting technologies in the mobile communications industry.

Simply stated, I wish for and foresee this concept providing our industry a healthy competitive environment for businesses facing like-market conditions with the least amount of regulation as possible.